IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4022 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VANRAJSINH HIRANBHAI CHAVDA - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR PR ABICHANDANI for Applicant(s) : 1,
Mr.U.R.Bhatt, A.P.P. for Respondent(s) : 1,
MR JA ADESHRA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 09/05/2007

ORAL JUDGMENT

1. Rule. Learned A.P.P. Mr. U.R.Bhatt waives service of rule on behalf of the respondent no.1-State.

2. This application under Section 482 of the Codie of Criminal

Procedure is preferred by the applicant with a prayer to quash and set aside the complaint filed by the opponent no.2 being CR no.I 0009/2007 registered with Joravarnagar Police Station for the offences punishable under Sections 406 and 420 of the Indian Penal Code.

3. The respondent no.2 in the complaint alleged that the complainant-Chandravadan Ramanlal Shah and his mother were the joint owners of the godown situated at City Survey Ward no.2. According to the complainant , the said property was sold to the present applicant-accused by executing a registered sale deed on 29-5-2006 in favour of Dhirajba, the wife of the present applicant-accused. It is further the case of the complainant that after about a month the applicant-accused met the complainant and told him that the City Survey Office is not transferring the said property in the name of his wife Dhirajba as the title does not appear to be clear and requested that a sale-deed be executed in the name of one Rajeshkumar Sumanlal Khakhi without consideration. Accordingly, on 29-6-2006, the subsequent sale-deed came to be executed by the complainant and his wife who were the original owners in favour of Rajeshkumar Sumantlal Khakhi. It is alleged by the complainant in the complaint that the applicant-accused had promised that the earlier sale deed executed in the name of the wife of the applicant-accused shall be cancelled. The complainant further alleged that the applicant-accused again intimated the complainant that the

subsequent sale deed has also not been transferred by the City Survey Office in the name of Rajeshkumar Sumantlal Khakhi. The applicant -accused also added that due to the transaction he has undergone a loss of Rs.5,81,000/- According to the complainant, the accused then took Rs.5,81,000/- by making a promise that he shall get the sale deed executed in the name of his wife cancelled. The applicant-accused then told the complainant that he shall go to his house, keep the money and return along with his wife for doing the work of cancellation of the said sale-deed. By so saying the applicant-accused had left and had not returned for doing the work of cancellation of the sale deed executed in the name of his wife Dhirajba after having taken the amount of Rs.5,81,000/-., and thereby, committed the offence of cheating and criminal breach of trust.

4. Heard learned Counsel for the applicant-accused Mr. P.R.Abhichandani, Mr. U.R.Bhatt,_learned A.P.P.for the respondent no.1-State and learned Counsel Mr. J.A. Adeshra for the respondent no.2.

5. Learned Counsel Mr. P.R.Abhichandani for the applicant-accused has submitted that the transaction is purely of a civil nature and that the complaint is filed with an ulterior motive on after thought which would amount to abuse of process of law. This submission does not merit acceptance. When there is a dispute

between the parties arising out of a transaction involving passing of valuable properties, the aggrieved person may have a right to sue for damages or compensation or at the same time the law permits the aggrieved party to proceed against the wrong doer for having committed an offence of criminal breach of trust or cheating. In the instant case, the allegations in the complaint , prima facie, constitutes offence of criminal breach of trust and cheating, and therefore , the applicant accused cannot escape from the criminal liability. It does not also lie in the mouth of the applicant-accused to say that the dispute is of a purely civil nature or that the complaint would amount to abuse of process of law.

6. On the other hand learned Counsel Mr. J.A. Adeshra as also the learned A.P.P. contended that the applicant-accused has deliberately and with a dishonest intention after having taken Rs.5,81,000/- on the pretext that he would get the sale deed executed in favour of his wife cancelled, had committed criminal breach of trust and cheating by not keeping his promise of cancelling the said sale deed, and as such, the complaint cannot be quashed.

7. It is settled law that this Court in exercise of its inherent jurisdiction under Section 482 of the Criminal Procedure Code would not make any roving inquiry into the questions of fact and record any findings. It is the duty of the trial Court. This Court has

only to scrutinize the FIR/complaint and take the allegations made in the complaint on their face value and quash the proceedings if the complaint does not disclose commission of any offence. Truthfulness or otherwise of the allegations made in the complaint or the evidence collected or the chargesheet, as the case may be, cannot be gone into by this Court in exercise of its inherent jurisdiction. In the instant case, it is important to note that the respondent no.2 in the complaint had made a specific allegation to the effect that the applicant-accused on making a promise to the effect that he shall get the sale deed executed in favour of his wife cancelled, took Rs.5,81,000/- from the complainant and disappeared as stated above. In the instant case, we find that the applicant accused has dishonestly misappropriated or converted to his own use the property, which is in violation of Section 405 of the Indian Penal Code, and thereby has committed criminal breach of trust. Moreover as discussed above, since at the time of making the promise the intention of the applicant-accused is found to be fraudulent and dishonest, and hence, prima facie, the applicant-accused is also guilty of the offence of cheating under Section 420 of the Indian Penal Code. In the present case, the complaint clearly alleges that the applicant accused with fraudulent intention to cheat and defraud the complainant had induced him to pay Rs.5,81,000/-by making a promise to cancel the sale deed executed in favour of the wife of the applicant-accused and had not done so. Thus, on scrutinizing the complaint and taking the allegations made

in the complaint on the face value, I find that the complaint discloses commission of offence of criminal breach of trust and cheating . (See: State of Haryana v. Bhajan Lal reported in 1992 Supp (1) SCC 335.)

8. Thus, having regard to the facts and circumstances and nature of the allegations levelled in the complaint, I do not think that it would be appropriate for this Court to quash the complaint at this stage in exercise of its inherent jurisdiction under Sec.482 of the Code. The Criminal Misc. Application, therefore , fails and is dismissed. Rule is discharged.

8.1 However, the concerned officer shall dispose of the proceedings in CR no.I 0009/2007 registered with Joravarnagar Police Station without being influenced by any of the observations made in this order, as they are confined only for the purpose of disposal of this application.

(M.D.Shah,J.)

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